IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 92 OF 2006

MR. GEORGE DOMINGOS LOBO(SIN.DEC.) REP.BY HIS HEIRS AND L.RS., ...Petitioner

Versus

MISS MARIA SEBASTIANA DE SOUZA ALIAS MISS MARY DE SOUZA AND 6 ORS., ...Respondents

Mr. S.D. Lotlikar, Sr. Advocate with Ms. S. Rao, Advocate for the Petitioners.
Mr. Shivanand Singbal For Respondent No. 1.

Coram:- SMT. RANJANA DESAI, J.

Date:- 15th June, 2006

P.C.:

This petition is filed by the heirs of one George Lobo who was the original tenant. It appears that eviction proceedings were initiated by respondent No.1 against the original tenant, on the ground of non-payment of rent, sub-letting and on the ground that the original tenant had kept the suit premises closed continuously for a period of seven months. The Rent Controller passed an order of eviction on the ground of sub-letting the suit premises and closure. He was not impressed by the allegation that the tenant was in arrears of rent. The Administrative Tribunal confirmed the finding of the Rent Controller.

2. Being aggrieved by these findings the heirs of the original tenant have approached this Court. I have heard at some length the learned counsel appearing for the petitioners. He contended that both the judgements are perverse, warranting interference by this Court in writ jurisdiction. He submitted that so far as the ground of sub-letting is concerned, both the Courts have heavily relied upon an agreement which

is not even exhibited. He submitted that the said agreement was marked for identification and hence both the Courts erred in relying on the same. He further submitted that both the Courts erred in holding that it was for the tenant to prove that the premises were not sub-let. The learned counsel then pointed out that so far as the second ground as regards non-occupation of the suit premises for a period of seven months is concerned, the law requires that there should be averment that the premises were kept closed without reasonable cause. He drew my attention to the judgment of the Supreme Court in Duggi Veera Venkata Gopala Satyanarayana v. Sakala Veera Raghavaiah in A.I.R. 1987 S.C. 406. He relied upon the following observations of the Supreme Court :-

" There can be no doubt that under the law of pleadings facts mentioned in sub-clause (iii) are to be pleaded in the petition and thereafter proved at the trial for the purpose of an order of eviction against the tenant. In a decision of this Court in Hasmat Rai v. Raghunath Prasad (1981) 3 SCR 605 : (AIR 1981 SC 1711), it has been observed by Desai, J. that in order to obtain an order of eviction of atenant under S.12(1)(m) of Madhya Pradesh Accommodation Control Act, 1961, the landlord has to plead and establish (i) that he bona fide requires the accommodation let to the tenant for non-residential purposes for the purpose of continuing or starting his business; and (ii) that he has no other reasonably suitable non-residential accommodation of his own in his occupation in the city or the town concerned. Further, it has been observed that any amount of proof offered without appropriate pleading is generally of no relevance. We respectfully agree with the above statement of law and reiterate the same. We are, however, not inclined to interfere with the impugned order of eviction in the instant case for the reasons stated hereinafter. "

He submitted that inasmuch as necessary averments are not made in the application, in the light of the above judgment of the Supreme Court, both the Courts ought not to have decreed the application on this ground.

3. So far as the first ground is concerned, though it is true that the

agreement dated 23.10.1981 is not exhibited, what seems to have weighed with the Courts below is the fact that this agreement was referred to in an Order dated 30.11.1989 passed by the Civil Judge J.D., Mapusa in Civil Misc. Application No.365/1989 in Regular Civil Suit No.413/1989/B filed by Anand Waman Verlekar to whom the original tenant had sub-let the suit premises. It was not disclosed by appellant No.1(a) when she was asked a specific question about it. She stated that she was not aware about it. This conduct itself suggests that the appellants did not want to disclose this agreement. If the Courts below have taken this fact into consideration, they cannot be faulted for that. Besides, apart from this, other circumstances have also been considered by the Courts below. There is no perversity attached to the concurrent finding of the Courts below on sub-letting.

4. So far as the second ground is concerned, both the Courts have concurrently come to a conclusion that the premises were kept closed by the original tenant for a period of more than seven months. The judgment cited by the learned Counsel for the petitioners will not be of any assistance to the petitioners, for the simple reason that what is observed by the Supreme Court is that any amount of proof offered without appropriate pleading is generally of no relevance. Obviously, therefore, not in all cases would this rule apply. Once parties lead evidence and the entire evidence is before the Court, some defect in pleadings will not always be material if the evidence before the Court is of sterling quality. In this case, it is clear from the evidence on record that the premises were in fact kept closed for seven months. Both the Courts have righly held that the premises were kept closed for more than seven months. Hence no interference is necessary with this finding .

In the circumstances, the petition is dismissed.

SMT. RANJANA DESAI, J.

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